

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

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STATE OF OKLAHOMA	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 4:05-cv-00329-GKF-PJC
	)	
TYSON FOODS, INC., et al.	)	
	)	
Defendants.	)	
	)	

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**POULTRY DEFENDANTS' JOINT RESPONSE TO STATE OF OKLAHOMA'S  
MOTION IN LIMINE TO PRECLUDE DEFENDANTS FROM MAKING REFERENCE  
TO THE DENIAL OF THE STATE'S MOTION FOR PRELIMINARY INJUNCTION  
OR TO ANY FACTUAL FINDINGS MADE THEREIN**

Come now Defendants Tyson Foods, Inc., Tyson Chicken, Inc., Tyson Poultry, Inc., Cobb-Vantress, Inc., Peterson Farms, Inc., George's, Inc., George's Farms, Inc., Cargill, Inc., Cargill Turkey Production, LLC, Simmons Foods, Inc., Cal-Maine Foods, Inc., and Cal-Maine Farms, Inc. (the "Poultry Defendants") and respectfully move the Court to deny the State of Oklahoma's Motion in Limine to Preclude Defendants From Making Reference to the Denial of the State's Motion for Preliminary Injunction or to Any Factual Findings Made Therein (Dkt. No. 2405). In support thereof, the Poultry Defendants state:

**I. Introduction**

The State seeks an order precluding the Poultry Defendants from making any reference to the fact that the State's motion for a preliminary injunction was denied or to any factual findings made with respect to the denial. The State argues that such references are irrelevant, would confuse the issues, and would unfairly prejudice the State. The Poultry Defendants contend that the State's Motion in Limine is unnecessary if this Court grants the Poultry Defendants' Joint

Motion to Strike Jury Demand and Integrated Brief in Support (Dkt. No. 2388). In the event that this Court does not strike the State's jury demand, it is important to note that the State's Motion in Limine is limited to references regarding the denial of the motion for preliminary injunction and factual findings made therein and does not seek to preclude the use of or reference to evidence presented during the preliminary injunction hearing.

## **II. Argument**

The State's Motion in Limine spends substantial time addressing the standards for a preliminary injunction and the established principle that a district court is not bound by its prior factual findings determined in a preliminary injunction hearing. The State takes this reasoning one step further and argues that because the Court is not bound by its prior decision, the Court's denial of the State's motion for a preliminary injunction and the factual findings therein are therefore irrelevant. Any mention of the denial or factual findings would allegedly present a danger of prejudice to the State. This reasoning is misguided considering the circumstances of this case. The Court's denial of the preliminary injunction is relevant, and the State wholly ignores the fact that no prejudice will result from reference to the preliminary injunction ruling or factual findings contained therein if the Court grants the Poultry Defendants' motion to strike the State's jury demand.

### **A. Mention of the Court's Denial of the State's Motion for Preliminary Injunction During a Bench Trial Will Not Result in Prejudice to the State.**

The State's argument culminates with the following quote from a district court opinion in Tennessee:

The preliminary injunction is not a conclusive determination of the issues in this case and is in no way binding upon the jury in their deliberations. Therefore, any mention of the fact of the preliminary injunction or the Court's findings and reasoning in support of the injunction generally is not relevant to the issue in the

case and presents a danger of prejudice to Defendants.

*Hauck v. Aztec Industries, Inc.*, 2004 U.S. Dist. LEXIS 30831, \*2 (E.D. Tenn. Nov. 3, 2004). *Hauck* involved a statement made by a witness at trial regarding a pre-trial preliminary injunction order. The district court determined that under the circumstances, the defendants were not so prejudiced by the statement as to warrant a mistrial. *Id.* at \*7. The situation in *Hauck* represents the common risk associated with mentioning a preliminary injunction at trial. Namely, that a defendant ordered to act or not to act in accordance with a preliminary injunction would be presumed guilty if that preliminary injunction order were put before the jury. As noted by the State, the standards are different for a preliminary injunction than at the trial on the merits and a defendant should have a fair opportunity to try the case on a complete record. The risk of prejudice recognized in *Hauck* is removed entirely when the case is tried on its merits before the same judge who issued the ruling relating to the preliminary injunction. This Court knows, and cannot ignore, its ruling on the State's motion for preliminary injunction, as well as the factual bases for its ruling. Not only would any mention of the Court's preliminary injunction ruling not prejudice the State during a bench trial, but in fact, reference to such ruling will serve as a useful shorthand for all involved in this lawsuit.

The Court's Order (Dkt. No. 1765) made clear that its denial of the State's motion for preliminary injunction was not a final ruling on the merits and that the denial was meant, in large part, to maintain the status quo while the parties gathered evidence, completed discovery, and fully developed their respective expert opinions. If the Court's ruling is discussed at trial, the Poultry Defendants are confident that the Court will keep this in mind and not attribute any undue consideration to its preliminary injunction ruling.

**B. The State's Motion in Limine is Limited to References to the Denial of Its Motion for Preliminary Injunction and Factual Findings Made Therein.**

The State takes the position that the denial of its motion for preliminary injunction and any factual findings made therein are irrelevant. However, the State does not dispute that evidence presented during the preliminary injunction hearing is relevant to the trial on the merits. The Poultry Defendants anticipate that at trial both parties will rely on evidence developed for and used during the preliminary injunction hearing. Several depositions were held in preparation for the preliminary injunction hearing and segments of those depositions have either been designated for use at trial or will likely be used to impeach a witness on the stand. Additionally, testimony given by witnesses during the preliminary injunction hearing who also testify at the trial on the merits may be used for impeachment purposes. This evidence is relevant under Federal Rule of Evidence 401, which defines relevant evidence as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” The Poultry Defendants wish to make certain that the scope of the State's Motion in Limine is clearly defined and that the Court does not interpret the motion to request that any and all references to the preliminary injunction hearing or evidence presented therein be excluded during the trial on the merits.

WHEREFORE, Defendants Tyson Foods, Inc., Tyson Chicken, Inc., Tyson Poultry, Inc., Cobb-Vantress, Inc., Peterson Farms, Inc., George's, Inc., George's Farms, Inc., Cargill, Inc., Cargill Turkey Production, LLC, Simmons Foods, Inc., Cal-Maine Foods, Inc., and Cal-Maine Farms, Inc, respectfully ask the Court to deny the State of Oklahoma's Motion in Limine to Preclude Defendants From Making Reference to the Denial of the State's Motion for Preliminary

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Respectfully submitted,

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